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The State of Utah v. John Legg, Jr. : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
JOHN LEGG, JR., : Case No. 20000428-CA
Defendant/Appellant. : Priority No. 2

REPLY BRIEF OF APPELLANT

Appeal from a judgment of conviction for attempted receiving or transferring a stolen vehicle, a third degree felony, in violation of Utah Code Ann. §§ 41-1a-1316(2) (1998), 76-4-101 (1999) and 76-4-102(3) (1999); burglary of a building, a third degree felony, in violation of Utah Code Ann. § 76-6-202 (1999); and aggravated assault, a third degree felony, in violation of Utah Code Ann. § 76-5-103 (1999), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

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Clerk of the Court

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
ARGUMENT	
THE TRIAL COURT ABUSED ITS DISCRETION WHERE IT DID NOT MAKE FINDINGS ON THE RECORD REGARDING STATUTORILY PRESCRIBED FACTORS BEARING UPON THE CONSECUTIVE SENTENCING ORDER.	1
CONCLUSION	8

TABLE OF AUTHORITIES

Page

CASES

<u>Barnard v. Sutliff</u> , 846 P.2d 1229 (Utah 1992)	5
<u>Morse v. Packer</u> , 1999 UT 5, 973 P.2d 422	4, 5, 6
<u>State v. Galli</u> , 967 P.2d 930 (Utah 1998)	1, 6
<u>State v. Jarman</u> , 1999 UT App. 269, 987 P.2d 1284	4
<u>State v. Ramirez</u> , 817 P.2d 774 (Utah 1991)	2, 7
<u>State v. Robertson</u> , 932 P.2d 1219 (Utah 1997)	2, 6
<u>State v. Schweitzer</u> , 943 P.2d 649 (Utah Ct. App. 1997)	1, 2, 6

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Utah Code Ann. § 76-3-401 (1999)	1, 2, 3, 4, 5
Utah R. Civ. P. 11	5, 6

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ARGUMENT

POINT: THE TRIAL COURT ABUSED ITS DISCRETION WHERE IT DID NOT MAKE FINDINGS ON THE RECORD REGARDING STATUTORILY PRESCRIBED FACTORS BEARING UPON THE CONSECUTIVE SENTENCING ORDER.

The State erroneously contends that the trial court did not abuse its discretion in imposing consecutive sentences even though it failed to make any findings on the record as to Appellant John Legg, Jr.'s ("Legg") history, character and rehabilitative needs - statutorily prescribed factors that a trial court must adequately consider when imposing consecutive sentences. See Utah Code Ann. § 76-3-401(4) (1999) (Consecutive Sentencing Statute); see also State v. Galli, 967 P.2d 930 (Utah 1998) (sentencing court must give "adequate weight" to each factor set forth in § 76-3-401(4) before imposing consecutive sentence). Citing State v. Schweitzer, 943 P.2d 649 (Utah Ct. App. 1997), the State asserts that a sentencing court is deemed to have adequately considered all relevant factors so long as pertinent information is in the record before the court at the time of sentencing. See State's Brief ("S.B.") at Point I.B.

The State's interpretation of Schweitzer is too broad. As explained in Legg's opening brief, his case presents a far less egregious set of facts. See Appellant's Brief ("A.B.") at n.1. Hence, inferring adequate consideration of all relevant facts in light of the statutorily prescribed factors set forth in § 76-3-401(4) is not appropriate here.

Indeed, it is a well-settled principle that this Court may uphold a lower court's failure to enter findings on the record only if "it would be reasonable to assume that the court actually made such findings." State v. Ramirez, 817 P.2d 774, 788 n.6 (Utah 1991). Assumed findings, however, are inappropriate if the "ambiguity of the facts makes this assumption unreasonable." Id. at 788; see also State v. Robertson, 932 P.2d 1219, 1234 (Utah 1997) (discussing three circumstances in which it would be unreasonable to assume trial court made findings, e.g., ambiguous facts or an explicit mandate by statute or case law that such findings be made).

The facts are so ambiguous such that it is not reasonable to assume that the court made the appropriate findings under § 76-3-401(4). For example, the gravity of the offenses at issue here do not unequivocally call for consecutive sentencing. See Utah Code Ann. § 76-3-401(4). Two of the three convictions were for non-violent property crimes (attempted receiving of a stolen vehicle and burglary). R.137 (Judgment, Sentence & Commitment).

The injuries sustained by Officer Hamideh were limited, consisting only of minor scrapes on his calves and hand, plus slight tearing of his uniform. R.95. Moreover, the injuries occurred to Officer Hamideh because he held onto Legg's car as Legg drove away; they were not the result of an intentional act on Legg's part to hurt Officer Hamideh specifically. R.93-94. Even the court failed to ascribe a "malevolent intent" to this incident. R.158[9]. The other victims in this case, Lindsay and Sheryl Strasburg, said in their victim impact statements that Legg's actions did not result in any physical or emotional injuries, property damage, medical treatment, counseling, or an impact on their livelihood or lifestyle. R.157 (Victim Impact Statements).

Further ambiguity exists as to Legg's history, character and rehabilitative needs, which were not addressed at all by the lower court. See Utah Code Ann. § 76-3-401(4); R.158[8-9]. The State paints an unduly negative picture of Legg and misrepresents the record to assert that his criminal record includes a number of felonies. S.B. 13. However, as explained by defense counsel below, his record actually includes only one felony conviction for business burglary. R.158[3]. The other felony conviction was overturned on appeal. Id. Another conviction for aggravated assault was prosecuted as a class A misdemeanor. Id.

The State additionally paints Legg as a long-time habitual

drug user, implying that his addiction contributed to the incident. S.B. 7, 13. Legg admitted a significant drug problem. R.158[5]. But, he noted to the court that he had been a "responsible citizen" since he was out of prison, and was using methamphetamine on this occasion only as a response to the recent death of his infant son. R.158[7].

The sentencing judge's exclusive focus on the "serious risk" that Legg posed to Officer Hamideh establishes ambiguity as to whether the court properly weighed all the evidence relevant to the factors set forth in § 76-3-401(4). Indeed, the record's silence as to the court's findings, combined with the ambiguity of the facts in this case as they relate to the appropriateness of consecutive sentencing, preclude this Court from adequately reviewing the consecutive sentencing order. See State v. Jarman, 1999 UT App. 269, ¶ 8 n.4, 987 P.2d 1284 (citation omitted) (upholding trial court order despite lack of requisite written findings only where oral findings provide sufficient basis for appellate review).

In addition to the foregoing, the Utah Supreme Court's opinion in Morse v. Packer, 1999 UT 5, 973 P.2d 422, compels the conclusion that sentencing courts are required to make findings on the record in imposing consecutive sentencing under § 76-3-401(4). Looking at the language of the statute at issue, the Supreme Court held,

Rule 11 of the Utah Rules of Civil Procedure requires that when a court imposes sanctions, "the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed." Utah R. Civ. P. 11(c)(3). We hold today that the inverse to this rule also holds. When denying a rule 11 motion for sanctions, a trial court must likewise describe the conduct constituting a basis for the denial. In other words, there should be findings on the record, or other appropriate explanation of the trial court's rationale, that will enable the appellate courts to apply the [Barnard v.] Sutliff[, 846 P.2d 1229, 1234 (Utah 1992)] standard [of review].

Morse, 1999 UT at ¶ 13. The Morse Court reasoned that review of a rule 11 motion for sanctions involved a "three-tiered" standard of review, reviewing factual findings for clear error, legal conclusions for correctness, and the type and amount of sanction for abuse of discretion. Id. at ¶ 10 (citing Sutliff, 846 P.2d at 1234). However, "[a]pplication of the Sutliff standard to the case in its present posture [was] not possible because of the lack of any meaningful explanation [on the record] supporting the district court's order denying sanctions." Id. at ¶ 14.

The Morse rationale compels a like conclusion here. First, the language of § 76-3-401 indicates that findings on the record are necessary. Using language similar to that of Utah R. Civ. P. 11, section 76-3-401 provides that "(1) [a] court *shall determine* . . . whether to impose concurrent or consecutive sentences. . . . [and] (4) . . . *shall consider* the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant in *determining* whether to impose consecutive

sentences." Utah Code Ann. § 76-3-401 (emphasis added); compare Utah R. Civ. P. 11(3) ("the court *shall describe* the conduct *determined* to constitute a violation of this rule and *explain* the basis for the sanction imposed"). The act of "consider[ing]" and "determin[ing]" implies a logical process that must be reflected in the record by way of findings. See Robertson, 932 P.2d at 1224-25 (unreasonable to assume trial court made findings if statute or case law require that such findings be made).

Additionally, the standard of review applied to consecutive sentencing orders necessitates findings so that this Court may conduct an adequate appellate review. See Morse, 1999 UT at ¶ 14 ("lack of any meaningful explanation supporting [] court's order" precludes appellate review). Consecutive sentencing orders are reviewed for an abuse of discretion. See Galli, 967 P.2d at 938. Although deference is granted to the trial court, this Court must be able to understand the lower court's findings to determine whether its consecutive sentencing decision was reasonable under the circumstances. See Schweitzer, 943 P.2d at 651. Absent any findings on the record by which to apply this standard of review, this Court is precluded from carrying out its appellate function.

This Court should remand for resentencing rather than for entry of findings in order to avoid hindsight justification. Remanding for findings at this juncture would only tempt the court to make a "post hoc rationalization" for its consecutive

sentencing order. Ramirez, 817 P.2d at 789 (remanding for new trial rather than entry of findings where trial court failed to make findings as to constitutional reliability of eyewitness identification evidence).


As a final matter, significant policies support this Court's intervention. First, the sentencing judge's summary reliance solely upon the possible danger that Legg presented to Hamideh reflects an all-too-common tendency among sentencing courts to make over-simplified and ambiguous orders, which result in appeals to clarify the sentencing decision. It also prevents appellate courts from adequately reviewing such decisions. See supra. Moreover, the absence of findings gives the Board of Pardons little guidance when defendants appear to request parole. Sentencing judges also miss an important opportunity to admonish defendants and to steer them toward rehabilitation and a changed life. More importantly, summary and ambiguous sentencing decisions have the appearance of unfairness and give defendants disincentives to rehabilitate themselves. Requiring courts to make findings on the record when imposing a consecutive sentence would avoid these dangers.¹

¹ Legg submits on his opening brief in response to the State's arguments not specifically addressed herein.

CONCLUSION

In light of the foregoing, and for the reasons set forth in his opening brief, Legg requests this Court to vacate his consecutive sentence and remand for resentencing to concurrent terms.

RESPECTFULLY submitted this 19th day of March, 2001.



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CERTIFICATE OF DELIVERY

I, CATHERINE E. LILLY, hereby certify that I have caused to be hand-delivered eight copies of the foregoing to the Utah Court of Appeals, 450 South State Street, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, Third Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 19th day of March, 2001.


CATHERINE E. LILLY

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this ____ day of March, 2001.
